WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1943

ENROLLED

HOUSE BILL No. 46

(By Mr. Hansbarger)

PASSED March 10, 1943

In Effect ninety days from Passage
AN ACT to amend and reenact sections two, ten, eleven and seventeen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter one hundred twenty-one, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, relating to a general consumers' sales and service tax.

Be it enacted by the Legislature of West Virginia:

That sections two, ten, eleven and seventeen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, be amended and reenacted to read as follows:

Article 15. Consumers Sales Tax.

Section 2. Definitions.—For the purpose of this article:

2 (1) “Persons” shall mean any person, firm, partnership, association, corporation, guardian, or committee;
"Tax commissioner" shall mean the state tax commissioner;

"Gross proceeds" shall mean the amount received in money, credits, property or other consideration from sales at retail within this state, without deduction on account of the cost of the property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses shall not be deducted, but any credit or refund made for goods returned may be deducted;

"Sales at retail" shall mean any transaction by which the ownership of tangible personal property is transferred for a consideration, when the transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use or any other purpose, except resale in its original form without change or processing. "Sale at retail" includes conditional sales and transactions under whatever name whereby title is ultimately to pass, but presently retained for security. "Sale at retail" shall not include an isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof,
or by his representative for the owner's account, such
sales, transfer, offer for sale or delivery not being made
in the ordinary course of repeated and successive trans-
actions of a like character by such owner or on his account
by such representative;

(5) "Retail dealer" shall mean a person engaged in
the business of sale at retail, or one who furnishes serv-
ices taxed by this article, in this state, to the ultimate
consumer;

(6) "Wholesale dealer" shall mean a person engaged
in this state in the business of selling tangible personal
property or furnishing services to retail dealers for re-
sale only; but such person, when sales are made for per-
sonal consumption or use, shall, with respect to such sales,
be classified as a "retail dealer"; and the fact that the pur-
chaser has a store license shall not exempt him from paying
the tax on the retail value of the goods or services bought
unless he is a bona fide retail dealer of such goods or
services. The term "wholesale dealer" shall also include
any person engaged in this state in the business of selling
machinery, supplies and materials in wholesale quantities
or of furnishing services to churches, incorporated charitable organizations, contractors or to persons engaged in the business of manufacturing, transportation, transmission, communication, or in the production of natural resources in this state: Provided, however, That this exemption shall not apply to fraternal or social organizations, nor to charitable organizations which charge for services rendered;

(7) "Ultimate consumer" shall mean a person who uses or consumes services or personal property for the immediate satisfaction of human desires or requirements, distinguished from services and goods, used or consumed in connection with the conduct of the business of producing or selling personal property or dispensing a service taxable under this article;

(8) "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect;

(9) "Tax" shall include all taxes, interest or penalties levied hereunder;

(10) "Purchaser" shall mean a person who purchases
tangible personal property or a service taxed by this article;

(11) "Service, or selected service" shall include all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible property, but shall not include personal services or the services rendered by an employee to his employer or any service rendered for resale.

(12) "Personal service" shall include those:

(a) Compensated by the payment of wages in the ordinary course of employment;

(b) Rendered to the person of an individual without, at the same time, selling tangible personal property or the use of such property, such as nursing, barbering, shoe shining, manicuring, and similar services;

(13) "Taxpayer" shall mean a retail dealer.

Sec. 10. Tax Paid by a Consumer.—It is the intent of this article that the tax levied hereunder shall be passed on to and be paid by the ultimate consumer. The amount of the
tax shall be added to the sales price, and shall constitute a part of that price and be collectible as such.

Sec. 11. Seller Shall Not Pay Tax; Penalty.—A person engaged in any business taxable hereunder shall not advertise or hold out to the public, in any manner, directly or indirectly that he will absorb all or any part of the tax, or that the tax imposed by this article is not to be considered an element in the price to the ultimate consumer. A person who violates this provision shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than fifty, nor more than one thousand dollars, or imprisonment in the county jail for not exceeding one year, or both, in the discretion of the court.

Sec. 17. Lien of Tax; Penalties; Recording.—A tax due and unpaid under this article shall be a debt due the state. It shall be a personal obligation of the taxpayer and shall be a lien upon all the property of the taxpayer, provided no such lien shall be enforceable against a purchaser (including lien creditors) for valuable consideration without notice, unless it be docketed in the office of the clerk.
of the county court in the county wherein such property
is located before a deed of trust, or bill of sale therefor
to such purchaser is delivered for record to the clerk of
the county court of such county.

The taxpayer who fails to file his return and remit the
tax at the time required by this article, shall in addition
to all other penalties pay a penalty of six per cent of the
amount of the tax collected during the period reported,
and for each succeeding thirty days elapsing before the
payment there shall be added an additional penalty of
one per cent. If the taxpayer is an association, or corpora-
tion, the officers thereof, whose duty it is to make the re-
turn and pay the tax, shall be personally liable, jointly
and severally, for any default on the part of the corpora-
tion.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originated in the House of Delegates

Takes effect ninety days from passage.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker House of Delegates

[Signature]

The within is approved this the 19th day of March, 1943.

Governor

[Signature]

Filed in the office of the Secretary of State of West Virginia on MAR 19, 1943.

[Signature]

Wm. S. O'Brien,

Secretary of State